

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Ron Jones, Director



RECEIVED

460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

02 DEC 11 9 50

TN REGULATORY AUTHORITY  
DOCKET ROOM

## MEMORANDUM

TO: Director Deborah Taylor Tate  
Director Pat Miller  
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services Division  
Ed Mimms, Manager, Do Not Call Program *[Signature]*  
Lynn Questell, Counsel *[Signature]*

DATE: December 5, 2002

SUBJECT: Settlement with Clark Communications Company, LLC  
(Docket No. 02-01180)

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Clark Communications Company, LLC (hereafter referred to as "Clark Communications") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA §65-4-401 *et seq.* Clark Communications registered as a solicitor with the Tennessee Regulatory Authority ("Authority") on December 10, 2001.

Four (4) separate complaints have been registered against Clark Communications with the Authority alleging that the company violated TCA §65-4-401 *et seq.* This Settlement requires Clark Communications to make a payment of \$4,000 to the Authority along with assurances from Clark Communications that it will fully comply with applicable state law. The terms of this Settlement require Clark Communications to pay the \$4,000 to the Authority within thirty (30) days of the date the Authority ratifies the Settlement. A representative for Clark Communications will be available telephonically at the December 16, 2002 Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Clark Communications. Staff submits the attached Settlement Agreement for your deliberation at the December 16, 2002 Authority Conference.

cc: Chairman Sara Kyle  
Richard Collier, General Counsel  
Roger Fitzgibbon, Jr., Counsel for Clark Communications

**THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**

IN RE:

ALLEGED VIOLATIONS OF TENN.  
CODE ANN. §65-4-401 *et seq.*, DO-NOT-  
CALL SALES SOLICITATION LAW,  
AND RULES OF TENNESSEE  
REGULATORY AUTHORITY, CHAPTER  
1220-4-11, BY:

CLARK COMMUNICATIONS  
COMPANY, LLC

)  
)  
) TRA DOCKET NO. 02-01180  
)  
) DO-NOT-CALL T02-00310  
) PROGRAM T02-00355  
) FILE NUMBERS T02-00413  
) T02-00465  
)  
)  
)  
)

---

**SETTLEMENT AGREEMENT**

---

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Clark Communications Company, LLC ("Clark Communications"). This Settlement Agreement is subject to the approval of the TRA.

This Settlement Agreement pertains to four (4) separate complaints received by the CSD alleging that Clark Communications violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations. TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to

receiving telephone solicitations. TENN. CODE ANN. § 65-4-405(d), requires that persons and entities desiring to make telephone solicitations to residential subscribers pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Clark Communications has been registered with the Authority as a Solicitor since December 10, 2001.

First Complaint: The CSD's investigation in this docket commenced after it received a complaint (T02-00310) on May 20, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on April 29, 2002. Through its investigation, the CSD learned that Clark Communications was making automated, prerecorded voice solicitation calls. The CSD provided Clark Communications with notice of this complaint on May 21, 2002.

Second Complaint: During its investigation, the CSD received a second complaint (T02-00355) on June 7, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on May 29, 2002. The CSD provided Clark Communication with notice of this complaint on June 10, 2002.

Third Complaint: The CSD received a third complaint (T02-00413) on July 8, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on June 27, 2002. The CSD provided Clark Communications with notice of this complaint on July 15, 2002.

Fourth Complaint: The CSD received its fourth complaint (T02-00465) on August 8, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on June 27, 2002. The CSD provided Clark Communications with notice of this complaint on August 9, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum penalty faced by Clark Communications in this proceeding is eight thousand dollars (\$8,000), arising from the four (4) solicitation complaints (\$2,000 each). CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations which resulted in this agreement, including Clark Communication's size, financial status, good faith and the gravity of the violations.

Clark Communications is a small company that has recently located in Johnson City, Tennessee. During the investigation, Clark Communications did not dispute that the calls were made and expressed an interest in resolving this matter. Further, after receiving notice of the complaints, Clark Communications began its own investigation of the alleged complaints.

In an effort to resolve these four (4) complaints, represented by the file numbers above, CSD and Clark Communications agreed to settle this matter based upon the following acknowledgements and terms, subject to approval by the TRA:

1. Clark Communications does not dispute that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §§65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Clark Communications has been registered with the TRA as a telephone solicitor since December 10, 2001, and obtains a monthly copy of the Do-Not-Call register.
3. Since receiving notice of the complaints that are the subject of this Settlement Agreement, Clark Communications has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) and has acted in a cooperative manner in attempting to resolve this matter.
4. Clark Communications agrees to make a settlement payment of four thousand dollars (\$4,000.00) to the TRA within thirty (30) days of the date the TRA approves this Settlement Agreement.<sup>1</sup> Upon payment of the amount of four thousand dollars (\$4,000.00) in compliance with the terms and conditions of this Settlement Agreement, Clark Communications will be excused from further proceedings in this matter.
5. Clark Communications agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. The Company voluntarily

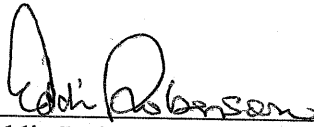
---

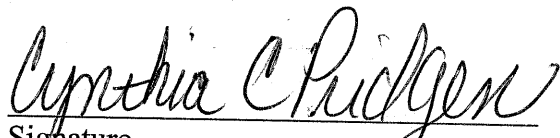
<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-01180.

subscribed to the TRA's Do-Not-Call Register and has taken measures designed to prevent calls to Tennessee residents listed on the Do-Not-Call Register.

6. Clark Communications agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
7. The TRA and Clark Communications agree that the payment of \$4000.00 to the TRA represents the settlement of all claims the TRA could bring against Clark Communications up to and including the date of this Settlement Agreement.
8. If any clause, provision or section of this Settlement Agreement is for any reason held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
9. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

10. In the event of any failure on the part of Clark Communications to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket for the purpose of securing compliance and enforcing the Settlement Agreement. Any costs incurred in enforcing the Settlement Agreement shall be paid by Clark Communications.

  
\_\_\_\_\_  
Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority  
  
12-3-02  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature  
Cynthia C Pridgen  
\_\_\_\_\_  
Print Name  
Marketing Director  
\_\_\_\_\_  
Print Title  
Clark Communications Company, LLC  
11/19/02  
\_\_\_\_\_  
Date